



## **Infrastructure Investment and Jobs Act EPA Questions & Answers as of 07.13.2022 (reformatted by CIFA)**

### **BOTH: CLEAN WATER AND DRINKING WATER SRFs**

---

#### **Equivalency**

##### **UPDATE 7.1 If a state has a project that is large enough to meet the base and BIL appropriations, can states use it as equivalency for both appropriations?**

Yes, if an assistance agreement is made with both BIL funds and base program funds, the project may be used to meet the equivalency requirements for both the BIL and base capitalization grants provided that the amount counted towards each equivalency requirement is proportional to the amount BIL and base amounts in the SRF assistance agreement. [Note that EPA significantly updated this answer from the 3/21/2022 version.] (7.13.2022)

##### **7.2 Does the CWSRF A/E procurement equivalency requirement (CWA section 602(b)(14)) apply to design-build and Construction Manager At-Risk procurements?**

EPA will adopt the Federal Transit Administration's (FTA's) procedures for handling design-build and Construction Manager At-Risk procurements. In Circular C 4220.1F: Third Party Contracting Guidance, FTA established a policy of requiring qualifications based selection procedures be followed for design-build procurements where design cost is predominant (51% or more of total cost) and construction contracting procedures (not applicable to CWSRF) where construction cost is predominant. Based on their Q&As, this policy extends to Construction Manager At-Risk procurements. Therefore, where the construction cost is predominant, Section 602(b)(14) does not apply to design-build or Construction Manager At-Risk procurements. (7.13.2022)

##### **7.3. If a single assistance agreement is funded with both BIL and base funds, must the entire assistance agreement comply with the equivalency requirements?**

Yes. States cannot apply equivalency requirements to a portion of an assistance agreement. In addition, all BIL supplemental appropriations (general supplemental and emerging contaminants) are federal funds, and therefore, all equivalency requirements apply to projects funded by BIL. (7.13.2022)

##### **7.4 Can state disburse BIL CWSRF/DWSRF General Supplemental capitalization grant funds to CWSRF/DWSRF base program projects or vice versa?**

Yes. Transparency and consistency are of the utmost importance to ensure that the BIL

funds are being used effectively and efficiently. BIL equivalency projects must be designated as such on the states' BIL IUP and be reported in FFATA. Thereafter, these projects will be considered to be "federal projects." These projects must meet all BIL specific requirements as well as general SRF equivalency requirements.

Consistent with long-standing successful practice in the SRFs, states may "cut the tie" when it comes to disbursements of actual dollars from the BIL CWSRF and DWSRF General Supplementals. In other words, a base program project could receive disbursements out of these capitalization grants. This is allowable because the BIL CWSRF and DWSRF General Supplementals have universal project eligibilities, i.e., these capitalization grants' eligibilities match the full suite of eligibilities under the base programs. For example, an upgrade of a publicly owned wastewater treatment plant. Note that this is not allowable under the BIL CWSRF and DWSRF Emerging Contaminants and BIL DWSRF Lead Service Line Replacement (LSLR) supplementals, given the narrower eligibilities under those capitalization grants.

EPA continues to promote the use of first-in-first-out (FIFO) in the SRFs and encourages states to use FIFO within each of the 5 "tranches" of BIL SRF supplementals. For example, a state DWSRF is encouraged to disburse funds from its BIL DWSRF LSLR 2022 infrastructure funds first before drawing from its BIL DWSRF LSLR 2023 infrastructure funds. The FIFO practice is consistent with the "expeditious and timely use" directives of the Clean Water and Safe Drinking Water Acts. (7.13.2022)

### **7.5 Can a state apply equivalency to SRF BIL General Supplemental capitalization grants?**

Yes, states can designate a group of SRF funded projects equal to the amount of the capitalization grant as federal projects. Such projects will need to comply with all equivalency requirements tied to federal SRF funding (e.g., federal crosscutters, FFATA, BABA, Single Audit Act, etc). This is allowable because the BIL CWSRF and DWSRF General Supplementals have universal project eligibilities, i.e., these capitalization grants' eligibilities match the full suite of eligibilities under the base programs.

States are not required to designate projects that received additional subsidy from the BIL General Supplemental capitalization grant as federal projects that must comply with equivalency requirements.

However, states cannot use projects funded in prior years to meet the equivalency requirements of an SRF BIL General Supplemental capitalization grant. That is because many of these equivalency requirements are from other federal laws and Executive Orders. As a result, EPA does not have the authority to allow states to bank them. (7.13.2022)

## **7.6 Can a state apply equivalency to the SRF BIL Emerging Contaminants (EC) and Lead Service Line Removal (LSLR) capitalization grants?**

No. Due to the narrower eligibilities tied to this funding, all federal requirements must apply to projects directly funded by these capitalization grants. As a result, states cannot apply equivalency to these grants and designate projects as federal. (7.13.2022)

## **7.7 For SRF programs, is BABA considered a federal cross-cutting authority (i.e., do "equivalency" rules apply)?**

Yes, BABA is considered a federal cross-cutting requirement that applies to SRF assistance equivalent to the federal capitalization grant (i.e., "equivalency" projects). EPA's SRF regulations at 40 CFR 35.3145 and 35.3575 require states and recipients of SRF funds equivalent to the amount of the federal capitalization grant to comply with federal cross-cutting requirements. Section 70914 of the IJA, which states when a Buy America preference applies, explains that "none of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Therefore, BABA only applies to projects funded in an amount equivalent to the federal capitalization grant and not to those projects receiving funds beyond the capitalization grant (i.e., "non-equivalency" projects). (Note: The American Iron and Steel (AIS) requirements in the Safe Drinking Water Act and the Clean Water Act continue to apply to all SRF projects, including non-equivalency projects.) (7.13.2022)

## **Cross Cutters**

### **11.1 What are the federal requirements of additional subsidy assistance in the form of "grant" (that are different than requirements of a loan with principal forgiveness)?**

Grant recipients are legally considered subrecipients for the purposes of OMB's grant regulations at 2 CFR Part 200 et. seq. In other words, assistance recipients receiving additional subsidy in the form of a grant are subject to additional federal requirements related to grants management that are not applicable to those receiving other forms of SRF additional subsidy. EPA's subaward policy (GPI 16-01) establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 CFR 200.331, 200.332, and 200.333 ("the applicable regulations"). Additionally, procurement requirements at 2 CFR 200.317-2 CFR 200.327 apply to these subawardees.

EPA will provide a memorandum summarizing the requirements. Broadly, these include the needs for assessing and addressing subawardee risk and ensuring fair and open competition for the utilization of contractors. (7.13.2022)

## State Match

### **13.1 May states use American Rescue Plan Act (ARPA) (P.L. 117–2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) for state match for the CWSRF and DWSRF capitalization grants?**

The ARPA SLFRF program has four categories of eligible uses, one of which is referred to as the revenue loss eligible use category. SLFRF funds available under the revenue loss eligible use category may be used to meet the non-federal cost-share or matching requirements of other federal programs, including the CWSRF and DWSRF programs. States may not use ARPA SLFRF funds available under the water and sewer infrastructure eligible use category for state match for the CWSRF or DWSRF. States using ARPA SLFRF funds available under the revenue loss eligible use category as state match for the CWSRF or DWSRF may consider funds expended (for the purposes of ARPA) at the point the state deposits the funds into the SRF. More information can be found in the U.S. Department of Treasury Q&A (#4.6, 4.9, and 6.2) at: <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf> (7.13.2022)

### **13.2 If states are using American Rescue Plan Act (ARPA) (P.L. 117–2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) for SRF state match, how does a state calculate the reduction in revenue due to the public health emergency?**

Treasury Q&A #3.1 explains that recipients may determine revenue loss by electing the standard allowance or calculating revenue loss according to the formula outlined in the final rule. For recipients not electing the standard allowance, the Treasury Q&A #3.6 provides the formula, while Treasury Q&A #3.5 and 3.13 provide additional information for calculating revenue loss entity-wide. (7.13.2022)

## Additional Subsidization

### **2.1 Do the additional subsidy mandates made permanent in the BIL (12% floor for the DWSRF and 10% for the CWSRF) apply to supplemental appropriations in the BIL?**

No. BIL provides specific percentages of required additional subsidization under each BIL supplemental funding pot. For the CWSRF General, DWSRF General, and DWSRF LSLR pots, Congress specifically overrode (via the "notwithstanding" language) the statutory percentages contained in CWA section 603(i)(3)(B) and SDWA section 1452(d)(2) to require different percentages of additional subsidy from those three appropriations. This directs states to use the percentages of additional subsidy in BIL for those CWA 603(i) and SDWA 1452(d) purposes, instead of the percentages in the underlying laws. (3.21.2022)

### **2.2 What is the time frame for meeting the BIL additional subsidy requirement?**

States must make commitments (i.e., they must sign assistance agreements, such as loans or grants, with eligible recipients), including additional subsidization funds, within one year after the receipt of each capitalization grant payment from EPA. The additional subsidy requirement for a given year's appropriation is considered to be met when the amount of subsidy funds specified in the appropriation have been disbursed. If the required amount of

subsidy is not disbursed once construction is completed on all projects, the state must allocate the remaining subsidy to another eligible project. (3.21.2022)

**2.3 Can the DWSRF set-asides for the BIL DWSRF General and LSLR funds be taken out of the 49% additional subsidy portion (rather than the repayable portion)?**

States must use 49% of the capitalization grant award as additional subsidy under the BIL DWSRF General and LSLR pots. States may use up to approximately 31% of those capitalization grant awards for set-asides. If states take the full set-asides, that leaves approximately 20% of funds for the states to use as repayable financing. Both percentages are based upon the capitalization grant award amount received by the state. (3.21.2022)

**2.4 Can a state apply for only the 49% additional subsidy dollars without taking the 51% loan funds?**

No, the BIL statute does not allow this. The additional subsidy percentage is based upon the capitalization grant amount received by the state. (3.21.2022)

**2.5 Is the BIL CWSRF General, BIL DWSRF General, and BIL DWSRF Lead Service Line Replacement additional subsidy requirement (49%) an exact amount, or a floor or ceiling?**

The BIL requires states to provide an exact amount of additional subsidy. States must give exactly 49% of the capitalization grant award to eligible entities as principal forgiveness or grants (or any combination of these). However, states may take DWSRF set-asides from the remaining 51% of funds, and some of these DWSRF set-aside funds may be used for LSL inventories and LSLR-related technical assistance. (3.21.2022)

**2.6 Can additional subsidy from the 5 BIL SRF funding pots be used by states to forgive SRF-eligible debt with an SRF-eligible assistance recipient for debt incurred in the past?**

Yes, but only where such debt was incurred after November 15, 2021, the date of the BIL's enactment, the recipient is otherwise eligible for additional subsidy, and if all applicable cross-cutters were followed. The BIL authorizes additional subsidy under the 5 BIL SRF funding pots exclusively in the forms of forgiveness of principal and grants. The law does not authorize additional subsidy in formats that allow for prior-incurred debt reductions or eliminations (i.e., write-offs) (see Question 2.7 below). Furthermore, the BIL, also known as the Infrastructure Investment and Jobs Act, is fundamentally an infrastructure construction and jobs creation law. Reducing or eliminating prior-incurred debt does not spur infrastructure construction nor does it create jobs. (7.13.2022)

**2.7 Can additional subsidy from base (not BIL) funding, as authorized by the CWA 603(i)(3)(B) and SDWA 1452(d)(2), be used by states to forgive SRF-eligible debt with an SRF-eligible assistance recipient for debt incurred before the date of the appropriations law enactment?**

Yes, as long as the project met all of the applicable SRF requirements. The CWA 603(i)(3)(B) and SDWA 1452(d)(2) explicitly authorize states to provide additional subsidy under the

base program in the forms of forgiveness of principal, grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt. (7.13.2022)

### **2.8 Are decentralized systems eligible to receive additional subsidy from the CWSRF BIL general supplemental appropriation?**

Yes. Per section 603(i)(1), additional subsidy may be provided to any CWSRF-eligible entity to implement a process, material, technique, or technology to address water-efficiency goals; to address energy-efficiency goals; to mitigate stormwater runoff; or to encourage sustainable project planning, design, and construction.

Decentralized wastewater treatment projects may qualify under the sustainable project planning, design, and construction criteria. Sustainable planning, design and construction means projects that are sited, sized, and designed to meet the design specifications over the life of the system and furthermore that maintenance considerations are factored into the design based on the application of the technology selected. States may deem a sustainable decentralized wastewater treatment project eligible and should document this determination in the project file in the same manner as a determination would be documented for other approvable projects that are eligible for SRF assistance. A variety of treatment and collection options are available when implementing decentralized wastewater systems, such as a conventional septic tank and drainfield with soil-based treatment, drip distribution, mound, aerobic treatment unit, recirculating sand filter, evapotranspiration, constructed wetland, etc. Many of these systems can be either single or clustered/community decentralized wastewater treatment systems.

Additional examples of decentralized wastewater treatment projects that could qualify include, but are not limited to, the following:

- Decommissioning of a cesspool and replacement with a sustainable decentralized wastewater treatment system alternative
- Installation of a sustainable decentralized wastewater treatment system where wastewater is discharged with no treatment into surface waters or into or onto the ground
- Cost-effective soil-based treatment alternatives

As always, if eligibility questions arise, states can reach out to EPA and confer. (7.13.2022)

### **2.9 May states use different disadvantaged community criteria in the DWSRF for different BIL and base capitalization grants? For example, can a state DWSRF have different disadvantaged community criteria for the BIL DWSRF LSLR funds?**

Yes, as long as the distinction is clearly explained in the state's Intended Use Plan and the criteria meet all statutory requirements. (7.13.2022)

## Eligibilities

### **6.7 Can asbestos cement (A/C) pipe be replaced via pipe bursting or pipe breaking?**

Pipe replacement projects involving A/C pipe are subject to the requirements of the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, subpart M. The Asbestos NESHAP is a collection of work practice standards intended to minimize the release of asbestos fibers during activities involving the handling of asbestos. In order to be eligible under the SRF programs and in compliance with federal crosscutters, an A/C pipe replacement project must comply with the Asbestos NESHAP. Neither pipe breaking nor pipe bursting activities comply with the Asbestos NESHAP. There are currently only three options for replacing A/C pipe that comply with the Asbestos NESHAP: open trenching, abandonment in place, and close tolerance pipe slurrification (CTPS). Open trenching involves excavating the entire A/C pipe, wet-cutting the pipe into sections using a snap cutter or similar tool, wrapping the pipe for containment, and removing the pipe for disposal. In lieu of open trenching, A/C pipe may be abandoned in place, with the new pipeline laid in a separate area without acting upon the existing A/C pipe. In addition, in 2019, EPA approved CTPS as an alternative work practice. The CTPS alternative work practice is a form of trenchless technology that provides an alternative to open trench for A/C pipe replacement that meets the requirements of the Asbestos NESHAP. Unlike pipe bursting and pipe breaking, CTPS does not leave friable asbestos (defined in the Asbestos NESHAP) in the ground. EPA has not approved an alternative work practice for other trenchless technologies such as pipe bursting, pipe breaking, or other similar methods. Forces such as those required for pipe bursting or pipe breaking of A/C pipe create friable asbestos. Leaving friable asbestos in the ground does not comply with the requirements of the Asbestos NESHAP. For general information about the Asbestos NESHAP, visit:

<https://www.epa.gov/asbestos/overview-asbestos-national-emission-standards-hazardous-air-pollutantsneshap>. For information about CTPS, visit <https://www.epa.gov/stationary-sources-air-pollution/notice-final-approvalalternative-work-practice-standard-asbestos>. (3.21.2022)

### **6.8 Must there be evidence that emerging contaminants exist in the water to receive the funds from the BIL CWSRF or DWSRF emerging contaminants pot?**

For example, if a water or wastewater system wants to add PFAS treatment as a preventative measure, is this eligible? Preventative-focused projects are eligible under these BIL funding pots. However, these projects should rank lower on Project Priority Lists than those projects addressing present contamination. 3/21/2022 7.1 Both Equivalency If a state has a project that is large enough to meet the base and BIL appropriations, can states use it as equivalency for both appropriations? BIL supplemental appropriations are federal funds and therefore all equivalency requirements apply to projects funded by each BIL capitalization grant. Projects funded through the base SRF programs cannot be used to meet the equivalency requirements of the BIL capitalization grants. However, if an assistance agreement is made with both BIL funds and base program funds, the project may be used to meet the equivalency requirements for both the BIL and base capitalization grants provided

that the amount counted towards each equivalency requirement is proportional to the amount BIL and base amounts in the SRF assistance agreement. (3.21.2022)

## Cash Draws

### **4.1 May a state SRF provide advance payments to a SRF assistance recipient (e.g., a water or wastewater system)?**

No. Per regulation at 40 CFR §35.3155(d)(2) and 40 CFR §35.3565(a)(1), SRF assistance recipients (an eligible recipient such as a water or wastewater system) must first incur a cost associated with an executed assistance agreement for the state SRF to have the authority to draw capitalization grant funds from the Treasury and disburse those funds to the assistance recipient. The assistance recipient need not have paid for the cost with their own funds first; instead, the assistance recipient can immediately forward the (unpaid) invoice to the state SRF for prompt review and disbursement of funds. Therefore, there is no need for SRF assistance recipients to pay for the invoices with their own funds first. (3.21.2022)

## Grants Management

### **8.1 Will BIL capitalization grants have the same Catalog of Federal Domestic Assistance (CFDA) number, now referred to as "Assistance Listing," as the base CWSRF and DWSRF capitalization grants?**

Yes. (3.21.2022)

### **8.2 When states submit capitalization grant applications to EPA, may states use the same Attorney General certification for each application (i.e., is only one state Attorney General certification is required per year)?**

Yes. Only one Attorney General certification is required per year. (3.21.2022)

### **8.3 If a state has spent more in state match for base grants than required, can that excess amount(s) be applied to the match requirement for the BIL supplemental capitalization grants?**

Yes. If the state provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements, including BIL capitalization grants. See 40 CFR 35.3135(a)(4) and 40 CFR 35.3550(g)(5). (3.21.2022)

### **8.4 May states submit one application in grants.gov for all BIL appropriation funds (e.g., combine the two annual CWSRF BIL pots into one application, and/or combine the three annual DWSRF BIL pots into one application)?**

No, states must apply for and EPA must award separate grants for each BIL appropriation and base appropriation. Congress appropriated 5 separate SRF capitalization grants per year via BIL that each have specific purposes. Separate applications and grants are consistent with grants regulations and reporting requirements and needs. Further, the federal government's grants management system does not allow multiple grant awards to be made from one application. To reduce administrative burden, states may use many of the same supporting

materials within each application, or incorporate them by reference. For example, states may combine base and/or BIL pot(s) of funding into a single IUP and PPL, or split into separate documents. (3.21.2022)

**8.5 DW Grants Management Can the Water Infrastructure Investments for the Nation (WIIN) Small, Underserved, and Disadvantaged Community (SUDC) grant be deposited into a state's DWSRF?**

No. EPA does not have the authority to combine funds from the DWSRF and the WIIN SUDC programs. (3.21.2022)

**8.6 May states apply for conditional capitalization grants under the BIL DWSRF Lead Service Line Replacement fund?**

Yes. Conditional awards are allowed under Grants Policy Issuance (GPI) 12-06:Timely Obligation, Award and Expenditure of EPA Grant Funds. Conditional capitalization grants may be useful when the state does not yet have enough eligible projects and/or activities listed on its IUP to apply for the full capitalization grant amount, but expects to have additional eligible projects and/or activities identified in the near future. With conditional awards, if the state and Region have completed negotiations for part of the work plan, the Region may conditionally approve the work plan and obligate the full amount of the capitalization grant award placing appropriate drawdown/payment term and condition restrictions for the portion of the work plan not yet approved. This does not prohibit work from beginning on approved activities. Such an arrangement would allow, for example, for states to begin LSL inventory work out of the DWSRF set-asides and to begin identified LSLR construction projects. Once additional LSLR construction projects are identified, the state must submit an updated IUP (including an updated Project Priority List) to include those newly-identified projects. EPA will then review and as appropriate, approve the updated workplan and amend the term and condition on the award. (7.13.2022)

---

**CLEAN WATER SRFS**

**Technical Assistance**

**1.1 Are the CWSRF 2% technical assistance funds subject to cash draw proportionality rules?**

The 2% technical assistance funds are an eligible type of CWSRF assistance. When any funds are drawn from a CWSRF capitalization grant (including funds for this purpose), the CWSRF proportionality rules, as provided in the regulations, apply. (3.21.2022)

**1.2 Must CWSRF technical assistance result in a future CWSRF-funded project?**

No. Technical assistance provided through the CWSRF does not need to result in a future CWSRF-funded project, but must meet the requirements of section 603(k) of the Clean Water Act. (3.21.2022)

### 1.3 What size system is eligible to receive support from the CWSRF 2% technical assistance funds?

Per Section 603(k) of the Clean Water Act, the 2% technical assistance funds may be used for nonprofit organizations or State, regional, interstate, or municipal entities to provide technical assistance to "rural, small, and tribal publicly owned treatment works." For the purposes of these funds, rural and small wastewater treatment systems are systems that treat up to 1 million gallons per day (MGD) of wastewater or serve a population of less than 10,000 persons and may also serve operations including, but not limited to, hospitals, schools, and restaurants. Most wastewater systems in the nation serve populations of less than 10,000 persons. Tribal systems serve populations of federally recognized tribes, Alaska Native Villages, and tribes on former reservations in Oklahoma (as defined by the U.S. Bureau of Indian Affairs). (7.13.2022)

## Allotments

### 3.1 Will the state CWSRF allocations change following results of the Clean Watersheds Needs Survey (CWNS)?

No. The CWSRF state allocations are strictly defined by the Clean Water Act (CWA) and barring a statutory change by Congress, EPA cannot update the CWA allotment formula to reflect the results of the latest Clean Watersheds Needs Survey. (3.21.2022)

## Administrative Funds

### 12.1 How do state CWSRF programs calculate the ceiling they may take for the Administrative funds as authorized under 33 USC 1383(d)(7)?

The maximum annual amount of CWSRF money (not including any fees collected) that may be used to cover the reasonable costs of administering the fund is the greatest of the following: an amount equal to 4% of all grant awards to the fund received by a state CWSRF from 1988 through the current fiscal year less any CWSRF amounts that have been used in previous years to cover administrative expenses; \$400,000; or 1/5th percent of the current valuation of the fund. Per the CWA, states make this calculation once per year, taking into account all federal capitalization grants received that year. States must calculate the ceiling for that year and document it in the Intended Use Plan. Admin can be drawn in any amount from zero up to that ceiling and, EPA encourages state CWSRF programs to draw admin funds from repayments where possible. (7.13.2022)

## DRINKING WATER SRFS

---

## Set-Asides

### 2.3 Can the DWSRF set-asides for the BIL DWSRF General and LSLR funds be taken out of the 49% additional subsidy portion (rather than the repayable portion)?

States must use 49% of the capitalization grant award as additional subsidy under the BIL DWSRF General and LSLR pots. States may use up to approximately 31% of those

capitalization grant awards for set-asides. If states take the full set-asides, that leaves approximately 20% of funds for the states to use as repayable financing. Both percentages are based upon the capitalization grant award amount received by the state. (3.21.2022)

### **5.1 What happens to the reserved set-aside authority after the end of new BIL appropriations and when all BIL funds are expended?**

To use reserved BIL set-aside authority in future years, states may use funds from both BIL and base DWSRF capitalization grants. In other words, the use of reserved BIL set-aside fund authority is not limited to actual BIL funds. For example, a state DWSRF may reserve set-asides authority under the FY 2022 BIL DWSRF LSLR capitalization grant and make use of that reserved authority under the FY 2024 BIL DWSRF LSLR capitalization grant, or out of the FY 2024 base capitalization grant (for BIL DWSRF LSLR set-asides eligible activities). (3.21.2022)

### **5.2 How do state DWSRF programs calculate the ceiling they may take for the Administrative and Technical Assistance set-aside as authorized under SDWA 1452(g)(2)(A)?**

The maximum annual amount of DWSRF money (not including any fees collected) that may be used to cover the reasonable costs for administration and technical assistance (as authorized under SDWA section 1452(g)(2)(A)) is the greatest of the following: an amount equal to 4% of all grant awards to the fund received by a state DWSRF for the fiscal year; \$400,000; or 1/5th percent of the current valuation of the fund. Per the SDWA, states make this calculation once per year, taking into account all federal capitalization grants received that year. States must calculate the ceiling for that year and document it in the Intended Use Plan. Funds for this set-aside may be reserved in any amount from zero up to that ceiling. (7.13.2022)

## **Eligibilities**

### **6.1 Is bottled or trucked-in water an eligible DWSRF expense, from either the revolving loan fund or the set-asides?**

No. The purchase of bottled or trucked-in water is not an eligible use of funds under the DWSRF. By law (SDWA 1452(a)(2)(B)), DWSRF funds can only be used to “facilitate compliance with national primary drinking water regulations (NPDWRs) applicable to the system.” EPA regulations at 40 CFR 35.3520(b) describe the types of projects eligible for DWSRF funding, and all involve infrastructure. Bottled or trucked-in water is not a capital investment nor does it help drinking water systems achieve or maintain SDWA compliance, the central purpose of the DWSRF. Given that bottled or trucked in water does not help build the technical, managerial, nor financial capacity of water systems, it is also not an eligible expense under the DWSRF set-asides. State DWSRFs may fund limited infrastructure (from the revolving loan fund) that may be necessary for trucked-in water (i.e., storage, piping or tap stands) during a “do not drink” order or other emergency situation, as long as the public water system will own that infrastructure and takes out the assistance agreement with the state DWSRF for the infrastructure. (3.21.2022)

## **6.2 Are owners of private wells and capital work at private wells (e.g., repair or installation of a private well) eligible for DWSRF assistance?**

No. This is not an eligible use of funds under the DWSRF. By law (SDWA 1452(a)(2)(B)), DWSRF funds can only go to public water systems, and public water systems can only use DWSRF funds to “facilitate compliance with national primary drinking water regulations (NPDWRs) applicable to the system.” Work on a private well – which is by definition not part of a public water system – does not help a public water system meet the NPDWRs standards. Private wells are not connected to public water systems, nor are private well owner customers of public water systems. Further, private wells are not regulated under the SDWA and are thus not subject to the NPDWRs. However, public water systems may get DWSRF financing to extend service to those who were previously on private wells. DWSRF assistance is also available to create new public water systems (i.e., a new public water system composed of customers who were previously on private wells). (3.21.2022)

## **6.3 Is water sampling an eligible DWSRF expense?**

Sometimes. States may use the DWSRF set-asides to conduct special (non-routine) monitoring to establish a baseline understanding of a contaminant of concern (e.g., PFAS). Note that routine compliance monitoring and operations and maintenance expenses are statutorily prohibited (see SDWA 1452(a)(2)). (3.21.2022)

## **6.4 Is sampling at a private well an eligible DWSRF expense?**

Sometimes. States cannot provide funds to private well owners for sampling. However, states may offer public water systems funding under the DWSRF set-asides for non-routine, not-compliance-related sampling at private wells to determine potential sources of contamination of the public water system's source water. The public water system may share the sampling results with the private well owners. Note that routine compliance monitoring and operations and maintenance expenses are statutorily prohibited (see SDWA 1452(a)(2)). (3.21.2022)

## **6.5 Can states use the BIL DWSRF Emerging Contaminant pot for projects for which the primary purpose is to address a contaminant with an established national primary drinking water regulation (NPDWR) maximum contaminant level (MCL) in situations where the state has a more strict (i.e., lower) MCL?**

No. For a project or activity to be eligible for funding under the BIL DWSRF Emerging Contaminant appropriation, it must be otherwise DWSRF eligible, and the primary purpose must be to address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances (PFAS). Projects that address any contaminant listed on any of EPA's Contaminant Candidate Lists are eligible (i.e., CCL1 – draft CCL5). States may use the BIL DWSRF General or DWSRF base program funding for projects that address regulated contaminants where the state has set a more strict MCL. (3.21.2022)

## **UPDATED 6.6 Is premise plumbing eligible for BIL DWSRF funding?**

No, replacement of premise piping is not eligible for BIL or base DWSRF funding. SDWA 1452(a)(2)(B) says, “Financial assistance under this section may be used by a public water

system only for expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g-1 of this title or otherwise significantly further the health protection objectives of this subchapter.”

Premise plumbing is not part of a public water system. It is not owned, maintained, or controlled by the public water system. Therefore, the DWSRF generally cannot fund anything beyond the service line (Note: in some limited cases, replacement fixtures are eligible expenses if the primary purpose is for water conservation).

However, there are instances in which entities such as schools themselves are public water systems. This may happen when the entity (e.g., a school) is a non-profit, noncommunity water system. In those cases, the entity owns all of its premise plumbing and that plumbing is part of its system. In those cases, replacement of that plumbing is DWSRF-eligible. [Note that EPA clarified this answer from the 3/21/2022 version.] (7.13.2022)

#### **6.9 Are PFAS buy-back programs eligible under the DWSRF? E.g., could a state DWSRF provide a loan to a water utility to buy back firefighting foam that contains PFAS? If not a loan, what about as a source water protection project with set asides?**

No, such programs are not eligible under the DWSRF. (7.13.2022)

#### **6.10 Could a public water system use DWSRF funds (either BIL or base) to clean up a contaminated plume that threatens a public water system’s supply?**

No. Addressing groundwater contamination is a cleanup activity usually authorized under other environmental statutes, such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and not SDWA. Remediation of groundwater contamination tends to require highly specialized technical, legal, engineering, and risk management and communication capabilities that do not align with DWSRF programs and project types. Existing DWSRF eligibilities—including treatment installation, new source development, and water system consolidation—can be implemented far more readily and effectively than remediation if the goal is to reduce contaminants in drinking water supplies and more quickly protect communities. (7.13.2022)

### **Lead Service Line Replacement (LSLR)**

#### **9.1 Is there a limit to the amount of BIL DWSRF LSLR supplemental funds that can be used by states to fund LSL inventories?**

No. There is no statutory minimum or maximum, but EPA expects IUPs to reflect appropriate statutory priorities. (3.21.2022)

### **9.2 Are service lines of any material (e.g., copper) eligible for BIL DWSRF funding or must they be made of lead to be eligible for BIL funding?**

To be eligible for replacement under the BIL DWSRF LSLR pot, service lines must be made of lead or galvanized pipe. To be eligible under the BIL DWSRF General or the DWSRF base program funding, service lines may be made of any material. (3.21.2022)

### **9.3 If a state has constitutional, statutory, and/or regulatory prohibitions on the use of public money on private property (i.e., prohibitions against using public water system user revenue to replace the privately-owned portion of a LSL), how can states use the BIL DWSRF LSLR funds?**

In this scenario, states may still be able to use the BIL DWSRF LSLR pot for LSL inventories while working towards eliminating those barriers to LSLR. EPA strongly encourages states to reassess and if needed, eliminate state-imposed barriers to addressing the public health threat of lead in drinking water. (3.21.2022)

### **9.4 If some customers (e.g., homeowners) refuse to allow the water utility access to replace the privately-owned portion of the lead service line, does this affect the project's DWSRF funding?**

State DWSRF programs may still fund the overall project but are strongly encouraged to use technical assistance and other outreach methods to achieve the fullest possible participation. If the customer continues to refuse access, then the water system should leave the publicly-owned portion of the lead service line in place (so as to not create a partial replacement) and document this action. To be clear, partial service line replacements are not eligible for DWSRF funding (from any DWSRF funding source). (7.13.2022)

### **9.5 Is the replacement of water mains eligible for funding under the BIL DWSRF Lead Service Line Replacement funding pot?**

No, the replacement of water mains is not eligible for funding under the BIL DWSRF LSLR funding pot because they are not "service lines." Under the BIL LSLR pot, Congress defined eligibility in this manner: "Provided further, That the funds provided under this paragraph in this Act shall be for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines."

The SDWA defines a "lead service line" at 42 USC § 300j-19b(a)(4) (under the Reducing Lead in Drinking Water Grant Program) as: "a pipe and its fittings, which are not lead free (as defined in section 300g-6(d) of this title), that connect the drinking water main to the building inlet." Section 1452 of the SDWA authorizes the DWSRF program. In Section 1452(h)(2) of the SDWA, 42 USC § 300j-12(h)(2), Congress explicitly references that "lead service line" definition in Section 300j-19b(a)(4) to instruct EPA to include assessments of costs to replace all "lead service lines" in the quadrennial Drinking Water Infrastructure Needs Surveys.

The installation of new water mains and the replacement of water mains are eligible under the BIL DWSRF General and base capitalization grants. (7.13.2022)

### **9.6 May state DWSRF programs make loans directly with engineering firms, contractors, or other entities that are not public water systems to perform LSL inventories and/or LSLR construction?**

No, the SDWA authorizes state DWSRF programs to issue loans and other assistance agreements from the infrastructure fund exclusively to public water systems. However, a public water system may partner with other public water systems to apply for DWSRF assistance. For example, a PWS may apply for a DWSRF loan on behalf of several PWSs to conduct LSL inventory work at multiple PWSs. Further, states may use the set-asides to directly contract with engineering firms and contractors to perform LSL inventory work. (7.13.2022)

### **9.7 Can the DWSRF be used to conduct water quality testing (or monitoring or sampling) for lead?**

Under the DWSRF, routine compliance monitoring and sampling, including monitoring and sampling for lead, is not eligible. Routine monitoring and sampling is part of a public water system's responsibility to comply with the SDWA regulations, including the Lead and Copper Rule.

State DWSRF programs may use the DWSRF set-asides to conduct non-routine, not-compliance-related lead sampling for investigatory purposes. Public water systems may also conduct non-routine lead sampling (if not for compliance purposes) as part of a lead service line replacement construction project out of the DWSRF infrastructure fund.

As part of the BIL DWSRF LSLR appropriation, non-routine, not-compliance-related lead sampling may be funded from this appropriation under the parameters explained above. There are similar eligibilities under the BIL DWSRF General funds and the DWSRF base program. (7.13.2022)

## **Small Systems**

### **10.1 Does the SDWA 1452(a)(2)(F) 15% small system provision apply to the BIL funds?**

SDWA 1452(a)(2)(F) requires that at least 15% of the amount credited to the Fund in any fiscal year be made available for assistance to small systems serving under 10,000 persons, to the extent funds can be obligated for eligible projects. Therefore, the percentage is based on all monies that a state expects to be available for loans as described in a state's IUP. This includes the capitalization grant, state match, bond proceeds, repayments, and interest earnings. In other words, the calculation is based on all monies the state plans to make available for assistance agreements as described in a state's IUP sources and uses table. The total "sources" dollar amount should be used for the calculation's denominator. For example, if a state projects \$50M in available "sources," the state should plan to fund at least \$7.5M of small system projects. (3.21.2022)